IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CUSTOMS APPEAL NO.61 OF 2006

Dr.Balabhai Nanavati Hospital and
Nanavati Hospital Medical Research
Centre .. Appellants

V/s

The Commissioner of Customs .. Respondents

AND

CUSTOMS APPEAL NO.62 OF 2006

Dr.Balabhai Nanavati Hospital and
Nanavati Hospital Medical Research
Centre .. Appellants

V/s

The Commissioner of Customs .. Respondents

Mr.E.P.Bharucha i/by M/s.Manilal Kher Ambalal & Co. for the Appellants.

Mr.A.S.Rao with Ms.Ritu Singh and Mrs.S.V.Bharucha for the Respondents.

CORAM : DR.S.RADHAKRISHNAN &
J.P.DEVADHAR, JJ.

DATE : 11th January, 2007.

P.C.:

1. Heard the learned Counsel for the Appellants and the learned Counsel for the Respondents. Both the Appeals are admitted. The learned Counsel for the Respondents waive service. By consent taken up for hearing.

2. In both the Appeals the Appellants are challenging the order of the Commissioner of Customs dated 25th March, 2005 and the order passed by the CESTAT dated 19th January, 2006 confirming the order of the Commissioner of Customs. The learned Counsel for the Appellants brought to our notice that the Commissioner of Cutsoms as well as the CESTAT did not consider as to

whether the Appellants had complied with all the conditions laid down for grant of exemption under the Exemption Notification No.64/88 dated 1st March, 1988. The learned Counsel for the Appellants also brought before us the records prima-facie indicating compliance of the conditions required for such grant of exemption, however the same appears to have not been considered by the Commissioner of Customs.

3. Under these circumstances, only on this limited ground we set aside the order of the Commissioner of Customs dated 25th March, 2005 as well as the order of CESTAT dated 19th January, 2006. Hence, the same is now remanded back to the Commissioner of Customs to decide the issue as to whether the Appellants have complied with all the conditions of the Notification No.64/88 dated 1st March, 1988 for grant of exemption. The Commissioner of Customs shall decide the aforesaid issue strictly on its own merits and in accordance with the law, based on the material that will be produced before the Commissioner of Customs.

4. Both the Appeals are accordingly allowed, however, with no order as to costs.

5. In view of disposal of both the aforesaid Appeals, the Notice of Motion No.3832/2006 filed in Appeal No.61 of 2006, as well as the Notice of Motion No.3831/2006 filed in Appeal No.62 of 2006 also stand disposed of.

(J.P.DEVADHAR, J.) (DR.S.RADHAKRISHNAN,J.)